

OFFICE OF THE WASHINGTON STATE LIQUOR CONTROL BOARD

November 10, 1993

The regular meeting of the Washington State Liquor Control Board was called to order at 9:30 a.m., Wednesday, November 10, 1993, in the Board conference room, fifth floor, Capital Plaza Building, Olympia, by Chairman Joe McGavick. Board Members Mike Murphy and Jack Rabourn were present. Also present was Kim O'Neal, Assistant Attorney General. Board Secretary Teresa Berntsen recorded the meeting.

**PUBLIC HEARING.** Chairman McGavick announced this was the date and time scheduled for the public hearing concerning two proposed rule changes. He indicated the appropriate notices had been filed with the Code Reviser's office and mailed to the news media and interested persons.

Chairman McGavick indicated the proposed amendments are to WAC 314-24-190 and WAC 314-24-200, concerning wine price postings. The changes being considered are a result of suggestions made by Peter Dow earlier this year. The Board's enforcement division worked with Mr. Dow to develop the amendments.

Gary Gilbert, Enforcement Chief, explained currently all wine wholesalers must file price postings with the Board by the tenth of the month in order to become effective the first day of the following month. Under the proposed changes to WAC 314-24-190, all wholesaler wine price postings must be received by the Board not later than five days prior to becoming effective for thirty days.

Currently all wine suppliers must file price postings with the Board by the twenty fifth of the month in order to become effective the first day of the second month. The posting and effective dates for wine suppliers would be the same as for wine wholesalers under the proposed changes to WAC 314-24-200.

Peter Dow addressed the Board. Mr. Dow stated he owns a restaurant, a winery, and a small distributorship. He indicated he was surprised at the amount of

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<b>PLAINTIFF'S EXHIBIT</b>	
CASE NO.	<b>CV04-0360P</b>
EXHIBIT NO.	<b>099</b>

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paperwork required to post wine prices. He stated he has talked to an anti-trust attorney, who believes the posting process is illegal, and goes against the Sherman Anti-Trust Act (a federal law that supersedes state law). Mr. Dow indicated he worked with the Board's enforcement division to create the proposed changes to a five day posting period. He stated the changes represent a compromise that would not destroy the posting structure, but would allow greater flexibility and compliance. Mr. Dow gave examples of how he feels the proposed changes would simplify the price posting system. He stated he polled the Washington state wineries and distributors, and received responses that indicated those polled would be in favor of a change to the current wine price posting system.

Mr. Dow stated the proposed changes would allow wineries and distributors to respond to the marketplace more efficiently. He further stated the proposals would allow for ease of compliance, and would bring more products into the state which in turn would bring more tax revenues.

Mr. Dow also indicated the proposed posting system would be an option available to suppliers and wholesalers, but they would not be obligated to post on a five-day basis.

Chuck Dalrymple, Licensing Services Supervisor, addressed the Board. Mr. Dalrymple stated while the present paper-based posting system could be improved, he believes the changes proposed would not accomplish this objective. He indicated the proposals would increase the work load on the small staff responsible for the price posting program. The amended rule would allow price changes at any time, to become effective five days after they are received. This allowance could result in the review of price postings of one wholesaler or supplier several times within any given thirty day period. Some of the larger wholesalers have hundreds or even thousands of products for which price changes could be requested during any thirty day period.

Mr. Dalrymple further stated if the proposals were adopted, there would be two separate price postings systems for beer and wine. Currently staff who work on

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wine postings help staff who work on beer postings if they become overloaded, and vice versa. The staff could no longer be utilized in this manner if the two systems were different.

Mr. Dalrymple also stated Board staff has been working on developing an automated price posting system. Data processing staff has indicated if the proposed amendments are adopted, the automated system would be back in its development stages.

Mr. Dalrymple recommended the Board reject the proposed changes to WAC 314-24-190 and WAC 314-24-200.

Chairman McGavick called for public comment on the proposed rule changes.

Dan McCarthy, from McCarthy and Schiering, addressed the Board. Mr. McCarthy indicated the proposed changes would allow retailers to be more competitive and to sell larger quantities of wine in a more efficient manner; decriminalize much of the activity that is already ongoing in regard to wholesalers not posting their products before selling; and allow importers to reflect currency exchange fluctuations promptly. Mr. McCarthy further stated the posting system could be challenged under anti-trust action if they are not modernized and utilized. He indicated he felt the wholesalers can adapt to the proposed changes.

Chuck Marush from Noble Wines and Peter Fritts from Grape Expectations also testified in favor of the proposed rule changes, echoing Mr. Dow's and Mr. McCarthy's comments.

Phil Wayt, Executive Director of the Beer and Wine Wholesalers Association, addressed the Board. Mr. Wayt indicated the current price posting system is a well thought-out, sequential system that allows the suppliers, wholesalers, and retailers to react to the market appropriately. He stated few retailers could react in a five-day posting period in a manner that would allow the prices to reach the consumer. Mr. Wayt further stated the new system would create a financial burden on the wholesalers (particularly the smaller wholesalers) who could be posting their products every day.

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Mr. Wayt indicated his organization hopes the Board can streamline the current sequential price posting system, with such methods as the computerized system currently being developed.

In response to Mr. McCarthy's comments regarding the legality of the current price posting system, Mr. Wayt quoted from a 1983 memo from the Board's former Senior Assistant Attorney General, John Hennen. In the memo Mr. Hennen stated "...in Washington a challenge to the Liquor Control Board's price postings would be met with a serious defense based on the system of liquor control in place in Washington and the basic objectives behind that system. The stated regulatory purpose of the liquor law in Washington is the protection of the welfare, health, peace, laws and safety of the people. The purpose is not to provide liquor to the consumer at the cheapest price possible to facilitate competition or to promote or to encourage sales and consumption of liquor."

Mr. Wayt stated he has not heard from any members of his organization that support the proposed changes.

Ralph Pistoresi from Pistoresi Distributors addressed the Board. Mr. Pistoresi responded to Mr. McCarthy's comments regarding wholesalers not posting their products before selling. He stated the Beer and Wine Wholesalers Association is a professional organization, and the wholesalers do post their prices as mandated by law. Other wholesalers echoed Mr. Pistoresi's comments.

The following people also testified in opposition of the proposed rule changes, echoing Mr. Wayt's concerns:

Mark Tobin from Safeway Stores; Bob Stevens, General Manager of Western Washington Beverage; Jerry Marvelle from United Distributors; Ralph Smith from Jansen Distributors; Mike Hewitt from Hewitt Distributors; Gary Raden from G. Raden & Sons; Bill Schallert from P & S Wine Company; Mark Miller from Lewis County Distributors; Mike Schmidt from Puget Sound Beverages; and Dave Cammarano from Cammarano Brothers Distributing.

Victoria Chiechi from the Washington Wine Institute addressed the Board. Ms. Chiechi stated the Institute has no position on the proposed rule changes. She explained in 1989 the Institute came to the Board and

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asked them to change the price posting process. However, the members could not come to a consensus and thus the Board took no action. The members of the Institute's current board have had three major discussions on the changes being proposed, and still have not reached a consensus.

Syd Abrams from the California Wine Institute addressed the Board. Mr. Abrams stated his organization opposes the proposed amendment to WAC 314-24-190. He indicated he felt any piecemeal changes to the posting system would not be wise; rather the entire price posting issue should be addressed.

Further discussion followed regarding the proposed changes and price postings for foreign wine exchange. Board Member Rabourn moved to accept Mr. Dalrymple's recommendation to reject the proposed changes to WAC 314-24-190 and WAC 314-24-200, Board Member Murphy seconded the motion. Discussion followed during which Board Member Rabourn stressed the Board's staff has been working diligently on streamlining the price posting system for over a year. Part of this work includes the development of an automated posting system, which should be operating in January. Board Member Murphy stated the current price posting system seems to work despite its flaws. Thus, Board Member Murphy suggested the industry try to reach a consensus on amendments they would like to see to the price posting system, and then the Board could consider accommodating such proposals. Chairman McGavick restated the motion to reject the proposed amendments to WAC 314-24-190 and WAC 324-24-200, both Board Members voted "yes" and the motion carried unanimously.

Chairman McGavick stated the Board would like to have further discussions with the beer and wine suppliers and retailers regarding the price posting system.

Ms. Chiechi welcomed Chairman McGavick to the Board on behalf of the Washington Wine Institute and the other members of the beer and wine industry present.

MEETING RECESSED. The meeting was recessed at 10:40 a.m.